IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 98 OF 2005

Shri. Anant Hegde & Ors ...Applicants

Versus

SICOM Ltd. & Anr ...Respondents

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Mr. P.C. Kansara i/b M/s. Kansara & Thanekar Advocate for Applicants

Mr. D.M. Purandare i/b M/s. Kartikeya & Associates, Adv. for Respondent No.1.

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 9TH SEPTEMBER, 2005

P. C.:-

1. Heard the learned advocate for the applicants i.e. original accused, the learned advocate for the respondent No.1 original complainant and the learned A.P.P. for the State.

2. The applicants i.e. original accused in Complaint No. 82/SS/2004 are seeking quashing of the said complaint. The said complaint is pending before the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. The said complaint is under Section 138 r.w. 141 of Negotiable Instruments Act.

3. Mr. Kansara, the learned advocate for the applicants has submitted that the complaint is beyond limitation. He has pointed out that the cheque in question was dishonoured on 3.1.2004. The first notice is dated 20.1.2004 and it was received by the accused persons on 21.1.2004. He has submitted that as the notice is received on 21.1.2004, the period of 15 days would be over on 5.2.2004, hence, the complaint ought to have been filed latest by 5.2.2005, however, the complaint has been filed on 15.3.2005, hence, the complaint is beyond limitation. It is further submitted that as the complaint is filed beyond time, the said complaint ought not to have been entertained by the learned Magistrate.

4. Mr. Purandare, the learned advocate for the respondent No. 1 i.e. original complainant has submitted that in fact the notice was issued on 2.2.2004 and in such case if the period after receipt of notice is taken into consideration the complaint has been filed within time. Thus, it is seen that the date when the actual notice was issued has been disputed. As it is disputed question, in my opinion, it would be necessary to lead evidence and therefore, at this stage the complaint cannot be quashed on this ground. One other fact which is to be taken into consideration is that the cause of action in the

present case has taken place after the amendment in the Negotiable Instruments Act. As per the amendment there is a provision for condonation of delay in filing complaint. Moreover, the period in which the notice is to be issued also stands enlarged as per the amendment. In view of this amendment, I do not find much merit in the contention that as there is delay in filing complaint, the complaint ought to be quashed.

5. Mr. Kansara, has thereafter submitted that the as far as applicant No.5 is concerned, he has resigned as director before the cause of action arose. It is submitted that as applicant No.5 was not in charge of or responsible for the conduct of business when the cause of action arose, the applicant No.5 cannot be said to be liable and hence, the proceedings in respect of the applicant No.5 be quashed.

6. In this connection, in the case of **Raj Lakshmi Mills Vs. Shakti Bhakoo reported in (2002) 8 SCC 236,** the High Court had quashed the proceedings on the assumption that "X" was not in charge of or responsible for the conduct of business of the firm. The Supreme Court has observed that "We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court

could not on an assumption of facts come to a finding of fact that the accused was not responsible for the conduct of the business. On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside".

7. Moreover, in the case of **State of M.P. Vs. Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691,** the Supreme Court has observed that in the matters under Section 482 of Cr.P.C., annexures to the petition cannot be termed as evidence without being tested and proved and hence, these annexures should not be acted upon by the High Court. So also, in the case of **Chand Dhawan Vs. Jawaharlal and Ors. reported in (1992) 3 SCC 317,** it has been held by the Supreme Court that the Court should not act on annexures to the petition where the documents are not admitted or accepted by the complainant. In view of the facts of this case and the observations of the Supreme Court in the various decisions cited above, I am of the opinion that no reliance can be placed on the documents showing that applicant No.5 had resigned much prior to the date when the cause of action arose.

8. Thereafter, it is submitted that the complaint does not disclose the averments which are necessary under Section 141 of the Negotiable Instruments Act

i.e. the complaint only mentions that the applicants are directors of the company and it is not stated in the complaint that they were in charge of and were responsible to the company for conduct of the business of the company. I have perused the said complaint. In the complaint it is mentioned that the accused are directors of accused No.1 company and as such are responsible in the business of accused No.1 company as well as for making the payment to the complainant company. The Supreme Court in the case of **K.P.G. Nair Vs. Jindal Menthol India Ltd. reported in JT 2000 (Supp.) SC 519,** has observed that though the words of Section 141(1) of the said Act need not be incorporated in a complaint as magic words, substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision. In the present case, on reading the complaint as a whole, it is clear that according to the complainant, the applicant was in charge of and was responsible to the Company for the conduct of its business. In the present case, on reading the averments in para No.8 of the complaint and other averments in the complaint, I am of the view that the requirements of Section 141 of Negotiable Instruments Act are met.

9. Lastly it was contended that the applicants are not under any legal liability in respect of the

payments to be made and hence, it cannot be said that the applicants are liable for offence under the Negotiable Instruments Act. In this connection, it would be pertinent to note the observations of the Supreme Court in the case of **A.V. Murthy Vs. P.S. Nagabasavanna reported in 2002 Cri.L.J. 1479.** In the said case it is observed that the dismissal of complaint on the ground that the cheque drawn was in respect of debt or liability which was not legally enforceable, is illegal and erroneous at the initial stage of enquiry. The Supreme Court has further observed that the said question is mixed question of law and fact and hence, trial would be necessary.

10. In view of the above position, I do not think this is a fit case for quashing of the complaint. Application is rejected.

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